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Joint Written Intervention

Submitted by the **International Commission of Jurists (ICJ) with International Federation of Human Rights (FIDH) and the Palestinian Centre for Human Rights**

In June 2002, Israeli authorities began constructing a so-called security fence. The structure itself, planned to stretch to 687 kilometres in length, varies in different areas. In rural areas, it consists of layers of razor wire, military patrol roads, sand paths to trace footprints, ditches, surveillance cameras and a three-metre high electric fence. This barrier is 60-100 metres wide. An additional buffer zone exists 30-100 metres on each side of the Wall. Palestinians are prohibited from entering this zone, which contains electric fences, trenches, cameras and sensors, and is patrolled by the Israeli military. There are also reported plans for "depth barriers," 150 metres in length, to be erected a few kilometres east of the Wall itself. In urban areas, such as Qalqiliya and East Jerusalem, the Wall is constructed of eight-metre high concrete walls with concrete watchtowers. It is also planned to extend into the Jordan Valley, and will join with the Western section to form two distinct enclosed Palestinian areas to the north and south of Jerusalem. Jericho will be encircled, while East Jerusalem will be isolated from the rest of the West Bank. A restrictive system of permits and passages through a limited number of gates complements the building of the Wall and applies solely to the Palestinians.

Israel has justified construction of the Wall by claiming it is necessary to ensure the security of Israelis.¹ Israel has the right and the duty to protect the security of its citizens. It must however do so in accordance with international law, including international human rights and humanitarian law. It is evident from numerous reports of United Nations agencies,² the Special Rapporteur for Human Rights in the Occupied Palestinian Territories³ and leading international human rights NGOs⁴ that the construction of such a wall seriously hinders the enjoyment of the most fundamental human rights by the Palestinian population and is in violation of international humanitarian law.

¹ See: Summary legal position of the Government of Israel in the Report of the Secretary-General prepared pursuant to General Assembly resolution ES-10/13, UN Doc. A/ES-10/248, 24 November 2003, pp 8-9.

² See: OCHA, UNRWA. See also Report of the mission to the Humanitarian and Emergency Policy Group - HEPG of the Local Aid Coordination Committee – LACC.

³ See: E/CN.4/2004/6, 8 September 2003.

⁴ See: Al-Haq, Amnesty International, B'Tselem, PCHR, Palestinian Independent Commission for Citizens' Rights, etc.

The applicable law: both international human rights and humanitarian law apply

The Gaza Strip and the West Bank, including East Jerusalem, have been under Israeli Military occupation since 1967 and the *de jure* applicability of the Fourth Geneva Convention to these territories has been recognized by the High Contracting Parties to the Convention,⁵ and repeatedly affirmed through resolutions of the United Nations Security Council and General Assembly and by the International Committee of the Red Cross. Furthermore, the international humanitarian law and international human rights law are concurrently applicable, as affirmed *inter alia* by the UN treaty bodies⁶ and by the Special Rapporteur for Human Rights in the Occupied Palestinian Territories⁷.

The so-called security fence in light of international human rights law

The impact of the Wall on the enjoyment of human rights by Palestinian people is severe, especially on the freedom of movement, right to property, right to privacy, family and home as enshrined in the International Covenant on Civil and Political Rights (ICCPR) and in customary law. The Wall also undermines the right to work, the right to an adequate standard of living, including the right to food, the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the right to education as enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The right to freedom of movement within one's own country is set forth in the Universal Declaration of Human Rights (UDHR) and the ICCPR. While this right may be subject to restrictions by law necessary for the protection of national security in a democratic society, any such restrictions must be necessary to protect such objectives, proportionate to the interest to be protected and consistent with other fundamental rights. However, the Wall, a structure which graphically represents the prison-like plight faced daily by Palestinians, cannot be justified as a necessary and proportionate measure to protect national security. It isolates Palestinians not merely from Israelis but from each other. Most significantly, it has been constructed not on Israeli territory, but on the West Bank. The sweeping movement restrictions it imposes are disproportionate and target only Palestinian civilians.

The construction of the Wall is resulting in the destruction of large amount of property. Restrictions on Palestinians' right to movement has also resulted in further violations of other fundamental rights, including the rights to work, food, health, and education. Palestinians have been unable to access their agricultural land, employment, markets, clinics, schools, and social and religious communities.

The so-called security fence in light of international humanitarian law

Israeli policies regarding the construction of the so-called security fence gravely breach international humanitarian law.

⁵ Conference of High Contracting Parties to the Fourth Geneva Convention Geneva, Declaration, 5 December 2001.

⁶ See Human Rights Committee, General Comment No. 29: States of Emergency (article 4), *CCPR/C/21/Rev.1/Add.11*, 31 August 2001, § 3; Human Rights Committee, Concluding Observations: Israël, *CCPR/C/79/Add.3*, 18 August 1998, § 10, and *CCPR/CO/78/ISR*, 21 August 2003, § 11; Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel, *E/C.12/1/Add.90*, 23 May 2003, § 15 and 31 and *E/C.12/1/Add.69*, 31 August 2001, § 11 and 12.

⁷ See: *E/CN.4/2004/6*, 8 September 2003, § 2.

Article 23(g) of the Hague Regulations prohibits the destruction or seizure of enemy's property, unless it is imperatively demanded by military necessity. Article 53 of the Fourth Geneva Convention expands this principle.

[a]ny destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered **absolutely necessary by military operations**.

International humanitarian law may allow for the requisitioning of property in occupied territories if it is for the need of the occupying forces. However, Article 52 of the Hague Regulations states that such requisitioning must be in proportion to the resources of the country. In light of the substantial proportion of arable land, aquifers and other natural resources which are being annexed by the construction of the Wall, its construction clearly does not meet this criteria.

At the heart of the Fourth Geneva Convention is Article 27, which proclaims the principle of respect for the human person and the inviolable character of the basic rights of individuals. While certain rights may be restricted for security measures “as may be necessary as a result of war,” no specifications are made as to what security measures may be considered legitimate actions for a State to take in a time of emergency. This leaves a great deal of discretion to the parties to a conflict to restrict rights. The ICRC Commentary stresses however, that what is essential is that such measures not affect the fundamental rights of the persons concerned.

While Israel has a right under international law to place limited restrictions over Palestinians' freedom of movement, any such restrictions must be justified and must not infringe upon Palestinians' other basic rights. As noted by the ICRC, measures which serve to isolate entire villages are contrary to international humanitarian law, and such restrictions frequently lead to grave breaches of numerous provisions thereof. In particular, measures taken to address security concerns must be in accordance with international humanitarian law, and must allow for a quick return to normal civilian life.

The so-called security fence in light of the right of people to self-determination

The Wall represents a violation of the Palestinian right to self-determination as affirmed in Article 1(1) common to the ICCPR and the ICESCR.

The UN General Assembly has repeatedly recognised the right of the Palestinian people to self-determination and condemned “those governments that deny the right to self-determination of ... the people of Palestine.”⁸ Construction of the Wall will pre-empt the successful exercise of the Palestinian right to self-determination by annexing much of the West Bank and dividing the remainder into unconnected enclaves.

Conclusion: The Wall as *de facto* annexation in violation of international human rights and humanitarian law

⁸ For example, General Assembly Resolution 2649 (XXV) of 30 November 1970.

It is highly problematic that the Wall does not follow the route of the Green Line but rather snakes across the West Bank ensuring that most of the illegal Israeli settlements in the OPT will be on the Israeli side.

Al-Haq, the International Commission of Jurists (ICJ), the International Federation of Human Rights (FIDH) and the Palestinian Centre for Human Rights believe that the so-called security fence is in fact an “Annexation Wall” as characterized by the Special Rapporteur on the OPT.

Approximately 14.5% of the West Bank will be isolated between the Wall and the Green Line and *de facto* annexed to Israel. Plans for the secondary wall to extend into the Jordan Valley suggest that over 50% of the West Bank would be annexed by the construction of the Wall. The annexed land includes an extensive amount of Palestinian essential natural resources. OCHA estimates that over 500,000 Palestinians will be trapped between the Wall and the Green Line. Another 250,000 Palestinians in the vicinity of the “Jerusalem Envelope” will find themselves trapped between the Green Line and the Wall in a series of disconnected and isolated enclaves.⁹ This will result in the economic and social suffocation of about 750,000 Palestinians, and there is a highest risk of those Palestinians fleeing their homes and / or being transferred.

While the occupation of territory during an armed conflict is not illegal *per se*, international law is clear that occupation is temporary and that the final status of any territory so occupied can only be determined in negotiations between the relevant parties, i.e., the Israeli and Palestinian people. UN Security Council Resolution 242, emphasised the “inadmissibility of the acquisition of territory by war”.

As noted by the UN Special Rapporteur on the Situation of Human Rights in the OPT, the Wall must be condemned as,

“an act of unlawful annexation in the language of Security Council resolutions 478 (1980) and 497 (1981) which declare that Israel’s actions aimed at the annexation of East Jerusalem and the Golan Heights are “null and void” and should not be recognized by States”.¹⁰

The construction of the Wall will isolate Palestinian people both from East Jerusalem and what remains of the West Bank, not to mention the Gaza Strip. Coupled with the settlements and Israeli-only by-pass roads, it will prevent the emergence of a viable independent Palestinian State. The ‘violence of construction’ it perpetuates is seen in the demolished homes, isolated villages, separated families and rotting agricultural lands left in its wake. Its construction clearly undermines any effort to obtain peace in the region through a just and durable solution. It is incumbent on the international community to condemn the construction of the Wall and to act to stop and reverse the construction already underway.

⁹ “A fence along the settlers’ lines,” *Ha’aretz*, 3 October 2003.

¹⁰ *E/CN.4/2004/6*, 8 September 2003, § 16.